

Item TH 16i

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 10/13/05



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-04-032

APPLICANT: Padriac I. Hannon

AGENT: Nathan Swift

PROJECT LOCATION: 2117 Las Flores Canyon Road, Malibu (Los Angeles County)

PROJECT DESCRIPTION: Construction of a 2,365.5 sq. ft., 35 ft. high single family residence; 10 cu. yds of grading; septic system; driveway; and attached two-car carport. The proposal also includes after-the-fact approval of the subject parcel that was created pursuant to Certificate of Compliance # 88-0175.

Lot area:	0.59 acres
Building coverage:	1,245 sq. ft.
Pavement coverage:	159 sq. ft.
Landscape coverage:	10,855 sq. ft.
Height:	34 ft. 10 in.
Parking spaces:	2

LOCAL APPROVALS RECEIVED: Conditional Certificate of Compliance #88-0175 recorded as document 88-501890 on April 13, 1988; Certificate of Compliance #88-0175 Clearance of Conditions recorded as document 03-3858301 December 22, 2003; Los Angeles County Health Department conceptual approval for private sewage disposal system; Los Angeles County Fire Department approval of Preliminary Fuel Modification Plan; and Los Angeles County Geotechnical and Materials Engineering Division Geologic and Soils Engineering Review Sheets recommendations for approval;

SUBSTANTIVE FILE DOCUMENTS: "Updated Geologic and Geotechnical Engineering Report, Proposed Single Family Residence APN 4453-019-0828 Las Flores Canyon Road, Malibu," by RJR Engineering Group, January 30, 2004.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the proposed project with **TEN (10) SPECIAL CONDITIONS** regarding (1) geologic recommendations, (2) drainage and polluted runoff control, (3) landscaping and erosion control plans, (4) assumption of risk, (5) removal of natural vegetation, (6) lighting restrictions, (7) structural appearance, (8) deed restriction, (9) cumulative impact mitigation and (10) condition compliance.

The applicant proposes to construct a three story, 35-foot high, 2,365 sq. ft. single family residence with attached two car carport, septic system, driveway, retaining walls, and 10 cu. yds of grading (1 cu. yd cut, 9 cu. yds. fill, 8 cu. yds. import). The project site is a vacant 0.59-acre parcel (APN 4453-019-028) located between Las Flores Canyon Road and Chumash Road in the Santa Monica Mountains. The subject property is surrounded by developed private lots and a few vacant parcels with hillside terrain. Due to the close proximity of several other residences, the entire lot has been cleared for fire protection purposes. Based on staff review of historic aerial photographs, this development predates the Coastal Act. No Environmentally Sensitive Habitat Area is located on the subject lot or within the fuel modification area required by the Fire Department for the proposed residence.

The proposal also includes after-the-fact approval of Certificate of Compliance #88-0175 to legalize the subject lot. The subject 0.59-acre lot was created in 1966 by a deed that purported to divide an approximately 2.35-acre parcel into two separate parcels. The Commission has previously approved a permit for residential development on the other parcel that resulted from the two-lot subdivision in 1966. In addition, the subject parcel is not in common ownership with the other contiguous parcel created from the parent parcel.

The standard of review for the proposed permit application is the Chapter Three policies of the Coastal Act. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

STAFF RECOMMENDATION:

I. Approval with Conditions

The staff recommends that the Commission adopt the following resolution:

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-04-032 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Plans Conforming to Geologic Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted geologic report, "Updated Geologic and Geotechnical Engineering Report, Proposed Single Family Residence APN 4453-019-028 Las Flores Canyon Road, Malibu," prepared by RJR Engineering Group on January 30, 2004 and subsequent addendums. These recommendations, including those concerning foundations, grading, landslide remediation, restricted use areas, site design, sewage disposal, and drainage, shall be incorporated into all final design and construction, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

2. Drainage and Polluted Runoff Control Plans

Prior to the issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval, two sets of final drainage and runoff control plans, including supporting calculations. The final plans shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm

season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

3. Landscaping and Erosion Control Plans

Prior to issuance of a Coastal Development Permit, the applicant shall submit two sets of final landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the geotechnical engineering and geologic consultant to ensure that the plans are in conformance with the consultant's recommendations. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the criteria set forth below. All development shall conform to the approved landscape and erosion control plans.

A. Landscaping Plan

- (1) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Plantings should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Native seeds used for revegetation shall be collected from areas as close to the restoration and landscaping sites as possible. During grading and remediation activities, topsoil, where possible, shall be separated from other soil and, upon completion of grading or remediation activities, replaced or used on other restoration or revegetation sites. Revegetation and planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Temporary irrigation systems may

be used until the plants are established, as determined by the habitat restoration consultant, and as approved by the consulting civil and geotechnical engineers, but in no case shall the irrigation systems be in place longer than two (2) years.

- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (4) The permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- (5) Vegetation within 100 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term final fuel modification plan for the project. The final fuel modification plan approved by the Fire Department shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. Pursuant to this approved plan, no riparian plant species shall be removed or disturbed if found on the property and no fuel modification will occur with the exception of removal of dead wood within 10 feet of the banks of any streams. Irrigated lawn, turf and ground cover planted within the fifty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- (6) The use of rodenticides containing any anticoagulant compounds (including, but not limited to, Bromadiolone or Diphacinone) shall not be used.
- (7) Vertical landscape elements shall be planted around the proposed residence to soften views of the development from Las Flores Canyon Road. All landscape elements shall be native/drought resistant plants.

B. Interim Erosion Control Plan

- (1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- (2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with

geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

- (3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C. Monitoring

Five (5) years from the date of occupancy, the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that assesses the on-site landscaping and certifies whether it is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage. Failure to comply with deadlines to submit the landscape monitoring reports will result in a violation of the subject permit and the commencement of enforcement proceedings, including potential judicial action and administrative orders, as well as the recordation of a notice of violation in the chain of title for the property.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to these permits, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The supplemental landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the remedial measures specified in the approved supplemental landscape plan.

4. Assumption of Risk

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide, erosion, earth movement, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement.

5. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification for the development approved pursuant to this permit shall not commence until the local government has issued a building or grading permit(s) for the development approved pursuant to this Coastal Development Permit.

6. Lighting Restrictions

- A. The only outdoor night lighting allowed on the subject parcel is limited to the following:
 - 1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
 - 2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60-watt incandescent bulb.
 - 3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60-watt incandescent bulb.
- B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

7. Structural Appearance

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal

development permit 4-04-032. The palette samples shall be presented in a format not to exceed 8 1/2" x 11" in size. The palette shall include the colors proposed for the all of the roofs, trims, exterior surfaces, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones). Including shades of green, brown and gray with no white or light shades, galvanized steel, and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and materials authorized pursuant to this special condition. Alternative colors or materials for future repainting, resurfacing, or new windows may only be applied to the structures authorized by Coastal Development Permit 4-04-032 if such changes are specifically authorized by the Executive Director as complying with this special condition.

8. Deed Restriction

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to these permits, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of these permits as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

9. Cumulative Impact Mitigation

The applicant shall mitigate the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains by ensuring that development rights for residential use have been extinguished on the equivalent of one (1) building site in the Santa Monica Mountains Coastal Zone through a Transfer of Development Credit (TDC) transaction.

Prior to the issuance of the Coastal Development Permit, the applicant shall complete the following steps to ensure that the development rights are extinguished on the lot(s) equivalent to one Transfer of Development Credit (TDC):

- 1) The applicant shall provide, for the review and approval of the Executive Director, evidence that the TDC lot(s) to be extinguished qualify with the criteria for TDC donor lots established in past Commission actions.
- 2) No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur on the TDC lot(s) except for:

Brush clearance required by Los Angeles County for permitted structures on adjacent parcels; planting of native vegetation and other restoration activities, if approved by the Commission in a coastal development permit; construction and maintenance of public hiking trails, if approved by the Commission in a coastal development permit; and existing easements for roads, trails, and utilities

- 3) The applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate, an open space easement over the TDC lot(s) to be restricted for TDC credit for the purpose of development right extinguishment. The recorded easement document shall include a formal legal description and graphic depiction, prepared by a licensed surveyor, of the entire parcel(s). The recorded document shall reflect that development in the parcel(s) is restricted as set forth in this permits condition. The grant of easement, or irrevocable offer to dedicate, shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. Such grant of easement or offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assigns, and any such offer to dedicate shall be irrevocable.
- 4) The applicant shall provide evidence, for the review and approval of the Executive Director, that the TDC lot(s) extinguished in Section 3 above have been combined with an adjacent lot(s) that is developed or developable and held in common ownership. The extinguished lot(s) shall be combined with the developed or developable lot(s) through a lot merger consistent with applicable local government lot merger ordinances. The combined lot shall be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, taxation, or encumbrance.
- 5) The applicant shall submit, for the review and approval of the Executive Director, a title report for the combined lot created by merging the TDC lot(s) and the developed or developable lot(s) that demonstrates that the open space easement grant or offer to dedicate required in Section 3 above is on the title.

10. Condition Compliance

Within 180 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the

applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

Failure to comply with deadlines to submit the landscape monitoring reports, or any other requirement and condition of this permit, will result in a violation of the subject permit and the commencement of enforcement proceedings, including potential judicial action and administrative orders, as well as the recordation of a notice of violation in the chain of title for the property.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant proposes to construct a three story, 35-foot high, 2,365 sq. ft. single family residence with attached two-car carport, septic system, driveway, retaining walls, and 10 cu. yds of grading (1 cu. yd cut, 9 cu. yds. fill, 8 cu. yds. import). The residence will be stepped into the hillside using caissons (**Exhibits 4-10**). The proposal also includes after-the-fact approval of Certificate of Compliance #88-0175.

The project site is a vacant 0.59-acre parcel (Assessor's Parcel Number 4453-019-028) located between Las Flores Canyon Road and Chumash Road in the Santa Monica Mountains area (**Exhibits, 1, 11, and 12**). The site will be accessed via a 10-foot long driveway off of Las Flores Canyon Road. The subject lot is surrounded by several single-family developments. Existing single-family homes neighbor the property to the southwest, south, and east. Two small vacant lots are located southeast and north of the subject lot. Across Las Flores Canyon Road, two lots, one developed with a single-family residence and one of which has been approved for development of a single-family residence (CDP) border the subject lot. Due to the surrounding residential development and fuel modification required for these residences, the parcel has been entirely cleared of vegetation with the exception of a few oak trees on the southeast side of the parcel. These oak trees are isolated and surrounded by development. Review by Commission staff of historic aerial photographs confirm that the lot was cleared of all vegetation, as described above, prior to the effective date of the Coastal Act in 1977. No environmentally sensitive habitat areas exist onsite or within the approved fuel modification area of the proposed residence (**Exhibit 11 and 12**). All of the proposed development, including the septic system, will be located outside of the drip line of the isolated oak trees onsite.

The subject 0.59-acre parcel was created by deed in 1966 as part of a two-lot subdivision (**Exhibit 2**). The subdivision was not properly permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning

Codes. In 1979, the County of Los Angeles issued a Conditional Certificate of Compliance (CC 1971) on the property to “legalize” the pursuant to the Subdivision Map Act. In 1988, the County of Los Angeles issued another Conditional Certificate of Compliance (CC 88-0175) on the property to “legalize” the lot pursuant to the Subdivision Map Act without realizing CC 1971 existed for the lot (**Exhibit 3**). In December 2003, the County recorded a Certificate of Compliance Clearance of Conditions for CC 88-0175. Although the 1966 two-lot subdivision occurred prior the effective date of the Coastal Act in 1977, because these lots were created in non-compliance with the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes, the subdivision was not recognized as creating new lots until the County issued the first Certificate of Compliance in 1979. The 1979 and 1988 Certificate of Compliances which “legalized” this lot pursuant to the Subdivision Map Act are considered a form of subdivision and, therefore, require a coastal development permit. However, the landowners at the time failed to secure a coastal development permit for the underlying subdivision which created the subject parcel subject to both of the above referenced Certificate of Compliances. The applicant is now requesting after-the-fact approval for the creation of the subject parcel through this coastal development permit, which is discussed in detail below (Section E Cumulative Impacts).

B. Geologic and Wildfire Hazard

The proposed development is located in the Santa Monica Mountains, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wildfires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Section 30253 of the Coastal Act states in pertinent part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

Geology

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard. The applicant has

submitted the "Updated Geologic and Geotechnical Engineering Report, Proposed Single Family Residence APN 4453-019-0828 Las Flores Canyon Road, Malibu," prepared by RJR Engineering Group in January, 2004. This report addresses the geologic conditions on the site, including drainage, subsurface conditions, groundwater, landslides, faulting, and seismicity.

The subject property ascends from Chumash Road on a slope that rises to Las Flores Canyon Road at an inclination of approximately 2.6:1. Drainage on the site is by sheet flow. Loose soil and fill are located throughout the site on top of bedrock that, in some places, is as shallow as 5 feet deep.

The geologic consultant has found the geology of the proposed project site to be suitable for the construction of a single-family residence. The geologic and geotechnical engineering consultants in their geologic and engineering report that:

Based upon the available data, from our review, investigation and analysis, the subject residential development is feasible from a geologic and geotechnical standpoint and the site will be free of any geologic or geotechnical hazards, as long as the recommendations of this report are incorporated into the design and construction of the project. The site will be free of landslides, slippage and excess settlement within the guidelines described in this report, provided our recommendations are incorporated in to the design and construction of the project. In addition, the stability of the site and surrounding areas will not be adversely affected by the proposed residential addition, based upon on our analysis and proposed design.

The engineering geologic and geotechnical consultant conclude that the proposed developments are feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The geologic and geotechnical reports contains several recommendations to be incorporated into project construction, design, drainage, foundations, and sewage disposal to ensure the stability and geologic safety for the proposed project site and adjacent properties. These recommendations include the use of caissons, engineered fill, and retaining walls.

In order to ensure that the recommendations of the geologic consultant have been incorporated into all proposed development, the Commission, as specified in **Special Condition One (1)**, requires the applicant to incorporate the recommendations cited in the geotechnical reports into all final design and construction plans. Final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed developments, as approved by the Commission, which may be recommended by the consultant, shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will also add to the geologic stability of the project site. Therefore, in order to minimize erosion and ensure

stability of the project site, and to ensure that adequate drainage and erosion control is included in the proposed development, the Commission requires the applicants to submit drainage and erosion control plans certified by the geotechnical engineer, as specified in **Special Conditions Two (2) and Three (3)**.

Further, the Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition Three (3)** requires the applicant to submit landscaping plans certified by the consulting geotechnical engineer as in conformance with their recommendations for landscaping of the project site. **Special Condition Three (3)** also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foliage weight. The Commission notes that non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition Three (3)**.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Five (5)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition Five (5)** avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

The Commission notes that because there remains some inherent risk in building adjacent to historic landslides, which exist near the subject site, but are not located on the subject site, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Four (4)**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

Special Condition Eight (8) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restriction on use and enjoyment of

the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.

The Commission finds that the proposed project, as conditioned, will serve to minimize potential geologic hazards of the project site and adjacent properties, as outlined in §30253 of the Coastal Act

Wildfire

The proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, *Terrestrial Vegetation of California*, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through **Special Condition Four (4)**, the wildfire waiver of liability, the applicant acknowledges the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of Special Condition No. 4, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with §30253 of the Coastal Act.

C. Water Quality

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain

optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.

The subject property is located on a hilltop that is several hundred feet above two tributaries to Las Flores Canyon Creek. The proposed development will result in an increase in impervious surface, which, in turn, decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to ensure the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site into the proposed project. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, stormwater runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, in this

case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Two (2)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measure implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition Three (3)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Finally, the proposed development includes the installation of an onsite private sewage disposal system to serve the residence (**Exhibit 6**). The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

D. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. Section 30251 also requires that development be sited and designed to protect views of scenic areas, minimize alteration of landforms, and be visually compatible with the surrounding area. The Commission is required to review the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public.

The subject site is located within a rural area characterized by expansive, naturally vegetated mountains and hillsides and areas of residential development at moderate densities. The site is located on the side of hill and is visible from Las Flores Canyon Road and Chumash Road. Residential development surrounds the property with the exception of a few vacant lots to the north of the property. Several existing or approved houses are within 200 ft of the subject lot and, as a result, the lot has been cleared for fire protection purposes.

The applicant proposes to construct a three story, 35-foot high, 2,365 sq. ft. single family residence with attached two car carport, septic system, driveway, retaining walls, and 10 cu. yds of grading (1 cu. yd cut, 9 cu. yds. fill, 8 cu. yds. import). The proposed residence will be stepped into the hillside using caissons, thereby minimizing the need for grading and landform alteration on the property and allowing the house and carport to be located only 10 feet above the grade of Las Flores Canyon Road. The proposed residence is not excessive in height or size and is compatible with other existing residential development in the area. As the proposed residence will be unavoidably visible from public viewing areas, including Las Flores Canyon Road, the Commission finds it necessary to require mitigation measures to minimize visual impacts associated with development of the project site.

The visual impact of the proposed structure can be minimized by requiring these structures be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass. To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition Seven (7)**.

Visual impacts associated with proposed development can be further reduced by the use of appropriate and adequate landscaping. Therefore, **Special Condition Three (3)** requires the applicant to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. Special Condition Three (3) also requires the use of vertical landscape elements which shall be planted around the proposed residence to soften views of the development from Las Flores Canyon Road. Implementation of Special Condition Three (3) will soften the visual impact of the development from public view areas. To ensure that the final approved landscaping plans are successfully implemented, **Special Condition Two (2)** also requires the applicant to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat.

Therefore, **Special Condition Six (6)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the nighttime rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area.

Further, **Special Condition Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property. The project as conditioned is consistent with Section 30251 of the Coastal Act.

E. Cumulative Impacts

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area. Section 30250(a) of the Coastal Act states:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30105.5 of the Coastal Act defines the term “cumulatively” as it is used in Section 30250(a) to mean:

[T]he incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The applicant is requesting after-the-fact approval of an unpermitted two-lot subdivision which created the subject 0.59-acre parcel. The subject lot (Assessor's Parcel Number 4453-019-028) was created by deed in 1966 as part of an unpermitted two-lot subdivision of an approximately 2.35 acre parcel (**Exhibit 2**). This subdivision resulted in the subject 0.59-acre lot (4453-019-028) and a remaining 1.76-acre lot. The remaining 1.76-acre lot was further divided into two parcels (APN 4453-019-027 and 4453-019-024) in the early 1970's.

The earlier 1966 subdivision that created the subject lot was not properly permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes. While the subdivision conformed to regulations limiting the number of parcels that could be created at one time, Los Angeles County staff has informed Commission staff that the size of the subject parcel was below the minimum lot size required by regulations effective at the time of subdivision and that therefore, the subject lot was not created in compliance with all required laws at the time of creation.

In 1979, the County of Los Angeles issued a Conditional Certificate of Compliance (CC 1971) on the property to “legalize” the parcel pursuant to the Subdivision Map Act. In 1988, the County of Los Angeles issued another Conditional Certificate of Compliance (CC 88-0175) on the property to “legalize” the lot pursuant to the Subdivision Map Act. It is unclear why a second certificate of compliance was issued for the same parcel. Nonetheless, what is significant is that both certificates of compliance for the subject site were issued after the effective date of the Coastal Act. In December 2003, the County recorded a Certificate of Compliance Clearance of Conditions for CC 88-0175 (**Exhibit 3**). Although the 1966 two-lot subdivision occurred prior the effective date of the Coastal Act in 1977, these lots were created in non-compliance with the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes in effect at the time of creation, and therefore, this development is not considered to be vested. The 1979 and 1988 Certificate of Compliances which “legalized” this lot pursuant to the Subdivision Map Act are considered a form of land division.

The Coastal Act includes land divisions in the definition of development. Section 30601 states that “development” includes:

“... subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use ...”

Because they constitute development, all land divisions must be authorized in a coastal development permit. (Section 30600). The Commission, through past permit actions, has considered “land division” to include: subdivisions (through parcel map, tract map, grant deed or any other method), lot line adjustments, redivisions, mergers and conditional certificates of compliance. The action of issuing the conditional certificate of compliance grants government authorization for a parcel that was previously created illegally, through means that did not comply with the laws in effect at the time. This type of certificate, for the first time, authorizes the land division that created a new parcel. Therefore it constitutes development under the Coastal Act, and requires a coastal development permit.

As such, the issuance of CC 1971 and CC 88-0175 constituted land divisions creating the subject parcel that occurred after the effective date of the Coastal Act. Such a land division should have been authorized through a coastal development permit. However, the landowners at the time failed to secure a coastal development permit for the

Certificate of Compliances. The applicant is now requesting after-the-fact authorization for the land division that created the subject site as part of this application.

The Commission typically reviews the creation of lots through a division of land in a comprehensive manner and not on a piecemeal basis. The Commission review typically entails an analysis of the individual and cumulative impacts of the subdivision on coastal resources. To accomplish this the Commission reviews the proposed lot sizes and lot configurations to ensure consistency with minimum lot size requirements of the LUP, surrounding lot sizes, and to ensure each lot can be developed consistent with Chapter Three Policies of the Coastal Act. To adequately analyze the environmental impacts of a subdivision and determine consistency with Chapter Three Policies of the Coastal Act the applicant is required to submit detailed grading plans, geology reports, percolation tests, biological studies, watershed analysis and other studies that encompass the entire subdivision.

In this case, a comprehensive analysis of the land divisions, which created a total of three separate parcels, is not possible because the lots have been sold to multiple owners and the Commission has permitted development on one of the newly created parcels. In March 1995, the Commission approved Coastal Development Permit 4-94-235 on parcel 4453-019-024 for construction of a new 2875 sq. ft., 20' high, two-story single-family residence to replace a single-family residence destroyed by the 1993 Old Topanga Fire Storm. The permit was approved with three special conditions regarding a landscaping and erosion control plan, geologic recommendations, and a wildfire waiver of liability. The other lot (4453-019-027) and subject lot (4453-019-028) remain vacant and are separately owned. Therefore, the Commission review, in this case, is limited to the subject 0.59-acre parcel.

The subject parcel and adjacent parcels that were subject to the underlying subdivision are in separate ownerships and the current landowners were not involved in the original subdivision of the original parent parcel. The Commission recently addressed this specific situation in the approval of the Malibu Local Coastal Program (LCP). Although the Malibu LCP is not the standard of review for development in Los Angeles County, the LCP provides policy guidance regarding the certificate of compliance issue in this particular case. The Commission found in the approval of the Malibu LCP that:

A land division for which a certificate of compliance is requested may be approved where the land division complies with all requirements of Section 15.2 except the minimum parcel size, in two situations: 1) where the Coastal Commission previously approved a permit for development on one of the parcels created from the same parent parcel, those parcels do not have a common owner, and the owner requesting the certificate of compliance acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction and 2) where the parcel for which the certificate is requested is not in common ownership with any other contiguous parcels created from the same parent parcel and the owner acquired

the parcel prior to certification of the LCP in a good-faith, arm's length transaction. (Sections 15.3 (C) and (D)). These provisions will prevent hardship to a subsequent purchaser, who was not the one who illegally subdivided the property and did not know or have reason to know that the parcel was created without compliance with the Coastal Act, if applicable, or other state laws or local ordinances. For all certificates of compliance that require a coastal development permit, a transfer of development credit is required to mitigate the cumulative impacts on coastal resources from creating a new parcel.

In this case, the Commission has approved a permit for residential development on one of the parcels created from the same parent parcel, the applicant purchased the property in a good faith, arm's length transaction, and the subject parcel is not in current ownership with any other contiguous parcels created from the parent parcel. Therefore, the Commission finds that given the above set of facts in this particular case, approval of the certificate of compliance is appropriate. Given the facts of this particular case, denial of the coastal development permit would result in an unreasonable hardship to the applicant who purchased this property in good faith without knowing the subject parcel was created without the benefit of a coastal development permit. However, the creation of an additional parcel in the Santa Monica Mountains will result in potential adverse cumulative impacts to coastal resources and therefore mitigation is required as discussed below.

The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer Development Credit (TDC) program as mitigation, such as has been done in past actions including CDPs P-78-155 (Zal), P-78-158 (Eide), P-81-182 (Malibu Deville), 5-83-43 (Heathercliff), 5-83-591 (Sunset-Regan), 5-85-748 (Ehrman & Coombs), 4-98-281 (Cariker), 4-00-028 (Layman), 4-00-044 (Blank Par-E, LLC) and 4-01-046 (PCH-Tyler Associates, Inc.). The TDC program has resulted in the retirement from development of existing, poorly sited, and non-conforming parcels at the same time new parcels or units were created. The intent of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of §30250(a). In summary,

the Commission has found that the TDC program, or a similar technique to retire development rights on selected lots, remains a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but to deny such projects, based on the provisions of §30250(a) of the Coastal Act.

The applicant is requesting approval to legalize the 0.59-acre subject parcel, which was created through the unpermitted division of an approximately 2.35 acre parcel. Staff's review indicates that the incremental contribution to cumulative impacts would be the creation, in this case, of one additional lot. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality, and resource degradation are associated with the development of an additional parcel in this area. Therefore, the Commission finds it necessary to impose cumulative impact mitigation requirements as a condition of approval of this permit in order to insure that the cumulative impacts of the creation of an additional buildable lot is adequately mitigated.

Therefore, **Special Condition No. Nine (9)** requires the applicant to mitigate the cumulative impacts of the development of this property, either through purchase of one (1) TDC or participation along with a public agency or private nonprofit corporation in retiring habitat or watershed land in amounts that the Executive Director determines will retire the equivalent potential building site. The Commission finds that, as conditioned, the proposed project is consistent with §30250 of the Coastal Act.

F. Violations

Unpermitted development occurred on the subject parcel prior to submission of this permit application involving creation of the subject lot. In 1966 the subject lot was created as part of a subdivision of an approximately 2.35 acre parcel. The 1966 subdivision that created the subject lot was not properly permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning codes. In 1979, the County of Los Angeles issued a Conditional Certificate of Compliance (CC 1971) on the property to "legalize" the pursuant to the Subdivision Map Act. In 1988, the County of Los Angeles issued another Conditional Certificate of Compliance (CC 88-0175) on the property without realizing CC 1971 existing for the subject lot. The 1979 and 1988 Certificate of Compliances which "legalized" this lot pursuant to the Subdivision Map Act are considered a form of subdivision and, therefore, require a coastal development permit. However, the landowners at the time failed to secure a coastal development permit for the Certificate of Compliance. The applicant is now requesting after-the-fact approval to authorize the subject parcel as it was created pursuant to the 1988 Certificate of Compliance in order to address the unpermitted development.

In order to ensure that the matter of unpermitted development is resolved in timely manner, **Special Condition Ten (10)** requires the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 180 days of

commission action, or within such additional time as the Executive Director may grant for good cause.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

G. Local Coastal Program

Section 30604 of the Coastal Act states:

a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the projects and are accepted by the applicant. As conditioned, the proposed developments will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed developments, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

H. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available

which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that the proposed projects, as conditioned, will not have significant adverse effects on the environment within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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**ADDENDUM**

DATE: October 11, 2005
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 16i, Thursday, October 13, 2005, Coastal Development Permit Applications 4-04-032 (Hannon)

The purpose of this addendum is to make changes to the staff report. *Note: ~~Strikethrough~~ indicates text deleted from the September 28, 2005 staff report pursuant to this addendum and underline indicates text added to the September 28, 2005 staff report pursuant to this addendum.*

1. Special Condition Four (4) on Page 8 of the staff report shall be revised as follows:

4. Assumption of Risk

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from ~~landslide, erosion, earth movement, and~~ wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement.

2. Section IV.B. Geologic and Wildfire Hazard page 14 of the staff report shall be revised as follows:

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Five (5)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition Five (5)** avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

~~The Commission notes that because there remains some inherent risk in building in the Santa Monica Mountains, which are prone to landslides and destruction from wildfire. The Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Four (4)**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.~~

Special Condition Eight (8) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restriction on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.